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THERESA LOUISE PASSINEAU

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THERESA LOUISE PASSINEAU,)

Plaintiff,)

No. C 07-05681 JW

VS.

FIRST AMENDED COMPLAINT FOR DAMAGES

MONTEREY COUNTY DEPARTMENT) **Title 42, U.S.C. Section 1983**
OF SOCIAL AND EMPLOYMENT;)
SERVICES; STEVE MUDD and)
PAT MANNION, in their official capacity as) **JURY TRIAL DEMANDED**
social workers for MONTEREY COUNTY)
DEPARTMENT OF SOCIAL AND)
EMPLOYMENT SERVICES;)

JURY TRIAL DEMANDED

MONTEREY COUNTY SHERIFF'S
DEPARTMENT; and D. FOSTER,
in her official capacity as Deputy Sheriff for
MONTEREY COUNTY;

SANTA CRUZ COUNTY HUMAN
RESOURCES AGENCY/FAMILY &
CHILDREN'S SERVICES; and
SYLVIA HERNANDEZ, in her official
capacity as social worker
for SANTA CRUZ COUNTY HUMAN

RESOURCES AGENCY/FAMILY &
CHILDREN'S SERVICES,
Defendants)

JURISDICTION AND VENUE

1. This court has jurisdiction over the subject matter of this action pursuant to Title 28, United States Code, Sections 1331 and 1343. This cause of action is authorized by 42 U.S.C. Section 1983 and the Constitution of the United States to redress deprivations of constitutionally protected rights and interests under color of state law.

2. The conduct upon which this suit is based occurred in this judicial district.

3. Plaintiff is informed and believes and on that basis alleges that each of the named defendants resides in this judicial district.

PARTIES

4. Plaintiff THERESA PASSINEAU is a citizen of the United States, a resident of Monterey County, California, and on July 6, 2007, had joint legal custodian of six children with her husband, Brett Passineau.

5. Defendant MONTEREY COUNTY DEPARTMENT OF SOCIAL AND EMPLOYMENT SERVICES (“DSES”) is a local public entity situated in the State of California and organized under the laws of the State of California.

6. Defendant STEVE MUDD is, and was at all times mentioned herein, a social worker and in doing the things hereinafter alleged, acted under color of state law as an agent of CHILD PROTECTIVE SERVICES, COUNTY OF MONTEREY

1 DEPARTMENT OF SOCIAL AND EMPLOYMENT SERVICES, and with its full
2 consent and approval.

3 7. Defendant PATRICIA MANNION is, and was at all times mentioned herein,
4 an Emergency Response Supervising Social Worker and in doing the things hereinafter
5 alleged, acted under color of state law as an agent of, COUNTY OF MONTEREY
6 DEPARTMENT OF SOCIAL AND EMPLOYMENT SERVICES, and with its full
7 consent and approval. Ms. Mannion's supervisors included MARGARET HUFFMAN,
8 Emergency Response Program Manager; ROBERT TANIGUCHI, Deputy Director; and
9 ELLIOT ROBINSON, Program Director.

10 8. Defendant MONTEREY COUNTY SHERIFF'S DEPARTMENT is a local
11 public entity situated in the State of California and organized under the laws of the State of
12 California.

13 9. Defendant D. FOSTER is, and was at all times mentioned herein, a DEPUTY
14 SHERIFF and in doing the things hereinafter alleged, acted under color of state law as an
15 agent of the MONTEREY COUNTY SHERIFF'S DEPARTMENT and with its full
16 consent and approval.

17 10. Defendant SANTA CRUZ COUNTY HUMAN RESOURCES
18 AGENCY/FAMILY & CHILDREN'S SERVICES is a local public entity situated in the
19 State of California and organized under the laws of the State of California.

20 11. Defendant SYLVIA HERNANDEZ is, and was at all times mentioned herein,
21 a social worker, and in doing the things hereinafter alleged, acted under color of state law
22 as an agent of both COUNTY OF MONTEREY DEPARTMENT OF SOCIAL AND
23 EMPLOYMENT SERVICES, and SANTA CRUZ COUNTY HUMAN RESOURCES

AGENCY/FAMILY & CHILDREN'S SERVICES with the full consent and approval of both counties.

12. In doing the things herein alleged, the defendants, and each of them, acted as the agent, servant, employee and in concert with each of the remaining defendants.

STATEMENT OF FACTS

13. At about 6:30 P.M. on Wednesday, July 6, 2005, defendant social worker STEVE MUDD, accompanied by at least three armed, uniformed peace officers, including defendant Monterey County DEPUTY SHERIFF D. FOSTER, arrived at the residence of the plaintiff THERESA PASSINEAU. Defendant MUDD'S first words to Plaintiff, as he exited his automobile were, "We're here to take the children." The arrival of the Defendants was otherwise unannounced, and MUDD entered the residence without plaintiff's consent and without a warrant. MUDD and the officers informed Plaintiff that they were taking these actions because of allegations made on July 2nd and thereafter that BRETT PASSINEAU, Plaintiff's husband, had sexually abused two of Plaintiff's children (adopted boys) while camping in San Luis Obispo County some several weeks earlier. The adopted boys were not present at the residence when MUDD and the officers arrived, and were in fact visiting a former foster mother in Santa Rosa. It was the former foster mother who had reported the allegations of the boys to Santa Rosa and Sonoma County authorities on July 2nd.

14. VIRGINIA LLEWELYN, the mother of BRETT PASSINEAU, was present at the Plaintiff's residence when Defendant MUDD and the officers arrived. Ms. Llewelyn offered to take custody of the children to live in her residence indefinitely, and in any event, until a court hearing could be held, but MUDD ignored her offer. BRETT

1 PASSINEAU arrived in his truck at the residence shortly after Defendant MUDD arrived,
 2 and offered to move out of the residence until the matter could be resolved in court, but
 3 MUDD ignored his offer. Plaintiff THERESA PASSINEAU expressed her consent in
 4 BRETT PASSINEAU'S proposal, and requested that the children remain in the home, but
 5 MUDD ignored her entreaties. Thereupon, Defendants MUDD and FOSTER chose to
 6 detain the children pending the filing of a dependency petition in the Monterey County
 7 Juvenile Court, so they took custody of Plaintiff's children (all girls) who were present at
 8 the residence at that time, and they departed.

10 15. From July 2nd to July 6th, a large number of social workers and peace officers
 11 from Sonoma County, San Luis Obispo County and Monterey county were involved in
 12 the investigation leading up to the removal of the children and thereafter. Early decisions
 13 had to be made regarding which of these governmental agencies should act, and which
 14 actions they should take. Two days after the removal, on July 8th, PATRICIA MANNION
 15 filed a sworn JUVENILE DEPENDENCY PETITION (VERSION ONE) in the Superior Court of
 16 Monterey County naming all the children as subjects of the petition. In her sworn petition
 17 Defendant MANNION declared,

18 j-9 On July 6, 2005, Betty Johnson, a social worker from Sonoma County,
 19 and Vera Chambers , a Monterey County social worker, interviewed the girls
 20 in the home... The interview took place outside of the home, *but the girls did*
 21 *not make any statements that they had been molested.*

22 j-11 Due to the complex nature of the investigation and the concern for the
 23 children's welfare, law enforcement placed the children in protective custody
 24 on July 6, 2005.

25 16. By her words, Ms MANNION demonstrated that she had been acting, and
 26 continued to act in a supervisory and coordinating capacity for the multi-jurisdictional, pre-
 27 judicial phase of the investigation, including the removal of the children from Plaintiff's

1 residence. Her activities would later include direct contact with Plaintiff as well as the
2 coordination of the large number of investigative personnel. Court records indicate that she
3 apparently acted in that capacity continuously for the duration of the case.

4 17. The above-named defendants had no probable cause to believe that the
5 children were in imminent danger of serious bodily injury at the time of the entry and
6 removal and therefore acted contrary to federal constitutional standards that required a
7 warrant before removal. The above-named defendants also acted contrary to the
8 requirements of California Welfare and Institutions Code sections 305 and 306.

9 18. The above-named defendants had ample time to obtain a warrant and failed
10 to do so, electing instead to remove the children without a court order of any kind.

11 19. The removal of the children was not necessary to avert any perceived harm
12 to their welfare.

13 20. In making the decision to remove and detain the children, FOSTER,
14 MANNION and MUDD acted contrary to federal constitutional standards requiring them
15 to return the children unless the children were in danger of serious bodily injury or death.
16 FOSTER, MANNION and MUDD also violated the mandate of Section 309 of the
17 California Welfare and Institutions Code in that they could not reasonably believe that
18 detention was necessary for the immediate and urgent protection of the children.

19 21. The COUNTY OF MONTEREY, in flagrant violation of the dictates of the
20 California Welfare and Institutions Code, has been conducting the removal of children
21 without warrants in this manner for years. In fact, MONTEREY COUNTY has for years
22 conducted the most minimal training of its social workers on the subject of warrants at all.
23 Based upon the statements of credible witnesses, Monterey County has *never* conducted
24 25 26 27 28

1 training on the specific procedures for obtaining warrants from judicial officers, such as the
 2 preparation of declarations in compliance with Code of Civil Procedure Section 2015.5.

3 This longstanding practice of removing children without warrants has become
 4 commonplace for MONTEREY COUNTY, with the highest levels of county social services
 5 officials effectively ratifying the practice and therefore making it standard operating
 6 procedure.

7 22. Almost immediately after taking the children, defendant MONTEREY
 8 COUNTY DEPARTMENT OF SOCIAL AND EMPLOYMENT SERVICES delegated
 9 much of the investigation in the field to the SANTA CRUZ COUNTY DEPARTMENT
 10 OF HUMAN RESOURCES AGENCY/FAMILY & CHILDREN'S SERVICES, which
 11 agency, jointly, and under the supervision and direction of the MONTEREY COUNTY
 12 DEPARTMENT OF SOCIAL AND EMPLOYMENT SERVICES, conducted a patently
 13 biased, coercive, and one-sided investigation of plaintiff with deliberate and callous
 14 indifference to plaintiff's constitutional rights.

17 23. An initial hearing was scheduled in Juvenile Court for July 11, 2005, but was
 18 continued until Friday, July 15, 2005. At the hearing on July 15th, the presiding judge
 19 volunteered the following gratuitous excoriation to Plaintiff's husband, as Plaintiff recalls it:
 20 "To bring a boy who had already been sexually abused into your home to protect and
 21 nurture him, and then to sexually abuse him again is despicable!" Then, turning to Plaintiff,
 22 the judge remarked: "If I were the mother, I would have kicked the husband out two
 23 seconds after I heard about this." Plaintiff's husband was not arrested on criminal charges
 24 until July 25th, indicating that there was not even probable cause to arrest the man on the
 25 date of the judge's hasty condemnation of him.

1 24. The judge's remarks in open court set the tone for the hostile, discriminatory
2 investigation of Plaintiff that was to be conducted over the next eleven months with
3 deliberate and callous indifference to her rights under the United States Constitution.
4 Consistent with the judge's remarks, social workers investigating the case, including
5 PATRICIA MANNION and SYLVIA HERNANDEZ repeatedly advised Plaintiff that she
6 could *never* effect reunification with her children unless she divorced her husband, and
7 they faulted her "progress" for not verbalizing express, explicit and total belief in the
8 accusatory allegations of the boys.

10 25. Social workers in both MONTEREY COUNTY and SANTA CRUZ
11 COUNTY, in flagrant violation of the dictates of the California Welfare and Institutions
12 Code, have been making these coercive statements for years. Based upon the statements of
13 credible witnesses, this longstanding practice of creating a "forced election" (between
14 children and husband) for persons in Plaintiff's position has become commonplace for both
15 MONTEREY COUNTY and SANTA CRUZ COUNTY, with the highest levels of county
16 social services officials effectively ratifying the practice, and therefore making it standard
17 operating procedure.

18 26. On the basis of a completely biased and constitutionally offensive investigation
19 conducted over a period of approximately eleven months or longer by the MONTEREY
20 COUNTY DEPARTMENT OF SOCIAL AND EMPLOYMENT SERVICES and the
21 SANTA CRUZ COUNTY HUMAN RESOURCES AGENCY/FAMILY &
22 CHILDREN'S SERVICES, the Superior Court of Monterey County terminated the
23 parental rights of plaintiff with regard to all of her children.

27. Whereupon, pursuant to California Government Code Section 945.6, plaintiff filed a timely claim against defendant MONTEREY COUNTY, on March 23, 2007, which the MONTEREY COUNTY BOARD OF SUPERVISORS rejected on May 8, 2007.

STATEMENT OF DAMAGES

28. As a direct and proximate result of the incidents alleged in this complaint, plaintiffs sustained injuries and damages including, but not limited to: pain, suffering, as well as severe emotional distress, fear, anxiety, embarrassment, and humiliation, all to their general damage in an amount according to proof.

29. As a further direct and proximate result of the incidents alleged in this complaint, plaintiff suffered loss of income, incurred attorney's fees, and other incidental expenses, all to her special damage in an amount according to proof.

30. In doing the things alleged herein, defendants acted willfully and maliciously and in deliberate, reckless or callous disregard of the plaintiffs' rights justifying an award of punitive damages in accordance with proof.

31. Plaintiffs have been compelled to engage the services of private counsel to vindicate their rights under the law. Plaintiffs are therefore entitled to reasonable attorney's fees pursuant to Title 42, United States Code § 1988.

Count One

Violation of Civil rights

Title 42, United States Code, Section 1983

(Defendants FOSTER, MANNION and MUDD)

32. Plaintiff realleges and incorporates herein by reference the allegations set forth in Paragraphs 1 through 27 of this complaint.

33. In doing the acts complained of herein, defendants FOSTER, MANNION and MUDD acted under color of state law to deprive plaintiff as alleged herein, of constitutionally protected rights including, but not limited to:

- (a) the right not be deprived of liberty without due process of law;
 - (b) the right to be free from unreasonable interference with parent-child relationships;
 - (c) the right to procedural due process;
 - (d) the right to be free from unreasonable searches and seizures;
 - (e) the right to be free from arbitrary intrusions on plaintiffs' physical and emotional being.
 - (f) the right to associate with another person in a marital relationship.

34. As a direct and proximate result of the acts complained of herein, plaintiffs have suffered general and special damages as set forth in this complaint.

Wherefore, plaintiffs pray for relief as hereinafter set forth.

Count Two
Violation of Civil rights
Title 42, United States Code, Section 1983
(Defendants MANNION and HERNANDEZ)

35. Plaintiffs realleges and incorporates herein by reference the allegations set forth in paragraphs 1 through 27 of this complaint.

36. In doing the acts complained of herein, defendants MANNION and HERNANDEZ acted under color of state law to deprive plaintiff as alleged herein, of constitutionally protected rights including, but not limited to:

- (a) the right not be deprived of liberty without due process of law;
 - (b) the right to be free from unreasonable interference with parent-child relationships;
 - (c) the right to procedural due process, including a fair and impartial court hearing;
 - (d) the right to be free from arbitrary intrusions on plaintiffs' physical and emotional well-being.
 - (e) the right to associate with another person in a marital relationship.

37. As a direct and proximate result of the acts complained of herein, plaintiffs have suffered general and special damages as set forth in this complaint.

Wherefore, plaintiffs pray for relief as hereinafter set forth.

Count Three
Violation of Civil rights
Title 42, United States Code, Section 1983
(Defendants FOSTER, MANNION AND MUDD)

38. Plaintiff realleges and incorporates herein by reference the allegations set forth in paragraphs 1 through 27 of this complaint.

39. The seizure and removal of the plaintiff's children constituted part of a pattern and practice of MONTEREY COUNTY to remove children from the custody of their parents without a warrant, without adequate investigation and without probable cause to believe that the children are in imminent harm of physical injury or death or without probable cause to believe that the children are at risk of any abuse or neglect. This constitutes a violation of Plaintiff's constitutional right to direct the care, custody, and

1 control of her children, *the oldest of the fundamental liberty interests* recognized by the
 2 United States Supreme Court, *Troxel v. Granville*, 530 U.S. 57 (2000).

3 40. As a direct and proximate result of the acts complained of herein, plaintiffs
 4 have suffered general and special damages as set forth in this complaint.

5 **Wherefore**, plaintiffs pray for relief as hereinafter set forth.

7 **Count Four**

8 **Violation of Civil rights**

9 **Title 42, United States Code, Section 1983**
 (Defendants MANNION AND HERNANDEZ)

10 41. Plaintiff realleges and incorporates herein by reference the allegations set forth
 11 in paragraphs 1 through 27 of this complaint.

13 42. The coercive and directive statements of social workers MANNION and
 14 HERNANDEZ to Plaintiff constituted part of a pattern and practice of MONTEREY
 15 COUNTY and SANTA CRUZ COUNTY to remove children from the custody of their
 16 parents without adequate investigation and in violation of the parents' fundamental right to
 17 associate freely in a marital relationship, in the sense of *Zablocki v. Redhail*, 434 U.S. 374
 18 (1978)

21 43. As a direct and proximate result of the acts complained of herein, plaintiffs
 22 have suffered general and special damages as set forth in this complaint.

24 **Wherefore**, plaintiffs pray for relief as hereinafter set forth.

25 **Jury Trial Demand**

26 44. Plaintiffs demand a jury trial in this matter.

Prayer

Wherefore, plaintiff prays for judgment against the defendants as follows:

1. General damages according to proof against all defendants;
 2. Special damages according to proof against all defendants;
 3. Attorneys' fees pursuant to statute against all defendants;
 4. Costs of suit; and
 5. For such other and further relief as the court deems appropriate.

Dated:

Jerome P. Mullins
Attorney for Plaintiff
Theresa Passineau